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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. RONNIE WINN, Defendant and Appellant.	A153306 (Solano County Super. Ct. No. VC142750)

Defendant and appellant Ronnie Winn (appellant) appeals from the trial court's denial of his petition for resentencing under Proposition 36, also known as the Three Strikes Reform Act of 2012. We affirm.

BACKGROUND[1]

On the evening of May 28, 1999, appellant got into a fight with two other men, James Rendleman and Jay Badial. Rendleman died from the injuries he sustained and appellant was charged with the murder of Rendleman and the misdemeanor battery of Badial. (Pen. Code, §§ 187, subd. (a); 242.)[2] The pleading also alleged two prior serious felony convictions (strikes) (§§ 667, subd. (a)(1); 1170.12) and two prior prison terms (§ 667.5).

[1] This background statement is largely derived from this court's decisions in *People v. Winn* (May 24, 2002, A091726) [nonpub.opn.] (*Winn I*) and *People v. Winn* (July 8, 2016, A144071) [nonpub. opn.] (*Winn II*). Appellant's July 12, 2018 request for judicial notice of the record in case number A091726 is granted.

[2] All undesignated section references are to the Penal Code.

The testimony at trial established that, on the evening of May 28, 1999, appellant entered, without invitation, the apartment where Rendleman and Badial resided. Rendleman, Badial, and their friend Ed Nunez, as well as several others, were watching television and drinking in an informal social gathering. Badial, who was familiar with appellant, ordered appellant to "get the F out," but appellant did not leave. Instead, appellant became embroiled with Badial and Rendleman in a dispute over an $8 debt owed to him by Rendleman's former girlfriend. Although Nunez gave appellant $5, appellant was not satisfied and kept asking for the balance. Throughout this argument, Badial kept yelling for appellant to leave.

Appellant hit Badial in the face, and then grabbed Badial around the throat and choked him until Badial began to lose consciousness. Rendleman tried to defend Badial by striking appellant over the head with a large, 40–ounce beer bottle. This dazed appellant, and also made him angry. According to Badial and Nunez, appellant then proceeded to beat and kick Rendleman. Badial testified that appellant punched Rendleman in the face about "half a dozen times" while Rendleman was on the ground. Nunez testified that appellant kicked or "stomped" Rendleman in the head "several" times "pretty hard."

Rendleman, who was about 60 at the time of the attack, suffered head and brain injuries that resulted in his death a month later. The forensic pathologist who performed the autopsy testified Rendleman had suffered numerous injuries to his face, head, and chest, consistent with being beaten and kicked. His face bore a "hexagonal waffle pattern" from the sole of a shoe, which was consistent with being "stomped." The cause of death was "closed head injuries due to blunt force trauma to the head."

The police officer who responded to the scene testified Rendleman had blood on his face and facial swelling. He had an obvious injury to his face which looked like the impression of the sole of a shoe, possibly the pattern of the bottom of a tennis shoe. Rendleman was going in and out of consciousness and was unable to say anything coherent. Rendleman mumbled a name that sounded like "Cal Johnson," but no such person was located.

One of the other guests, Bridget Hull, testified she saw appellant strike Badial in the face and that he then lifted Badial off the floor and pinned him against a wall while strangling him around the neck. Badial's eyes and face began to swell. Rendleman urged appellant to stop, and, when appellant did not stop, Rendleman hit him over the head with a large beer bottle. Hull became scared and left. Hull testified she remembered that appellant was wearing dress shoes.

In a voluntary statement to the police, appellant admitted fighting with Rendleman and Badial. He admitted hitting Badial in the face and choking him, but he at first denied kicking Rendleman. Appellant blamed Rendleman's injuries on Nunez, who defended appellant by beating and stomping on Rendleman. Later in the interview, after the police accused appellant of lying, appellant acknowledged that he struck Rendleman and kicked him in the chest, but he denied kicking or stomping him in the head. He was helped out of the apartment and down the stairs by his longtime friend Linda Crawford.

The defense recalled Nunez to describe a fight he had with Rendleman just a few days before the May 28, 1999, incident. As Nunez explained it, the two men had been drinking. A misunderstanding arose which resulted in Nunez hitting Rendleman. The next day, Nunez and Rendleman shook hands and put the misunderstanding behind them.

Appellant's longtime friend Linda Crawford testified for the defense that on the evening of May 28, 1999, she heard screaming and calls for help from appellant. She went to the apartment where the fight occurred and saw Rendleman standing with his fists clenched in a fighting position. Appellant started toward Rendleman, but Crawford restrained him. She then left with appellant. Crawford believed appellant was wearing dress shoes, not tennis shoes, the night of the fight.

A police detective testified on rebuttal that he had repeatedly attempted to interview Crawford, but she at first declined to speak with him, claiming illness. When he finally did interview her, she said she was not with appellant at the apartment on the evening of the attack, and appellant only arrived at her place later in the evening.

The jury found appellant not guilty of murder in the second degree, but guilty of involuntary manslaughter and misdemeanor battery. Appellant was sentenced to a term

of 25 years to life for involuntary manslaughter under the three strikes law, plus two consecutive one-year terms for prison term prior convictions (§ 667.5), for an aggregate term of 27 years to life. A concurrent six-month term was imposed for the misdemeanor battery conviction.

In *Winn I*, *supra*, A091726, this court affirmed appellant's convictions but concluded one of the two one-year sentence enhancements under section 667.5 had to be vacated, reducing the total sentence to 26 years to life.

In January 2013, appellant petitioned for resentencing under Proposition 36. The trial court found he was ineligible and he appealed. In 2016, in *Winn II*, *supra*, A144071, this court vacated the order denying appellant's petition for resentencing and remanded for a determination of whether, beyond a reasonable doubt, appellant intended to cause great bodily injury to Rendleman.

On remand, the trial court found beyond a reasonable doubt that appellant intended to inflict great bodily injury in committing the May 1999 involuntary manslaughter. Accordingly, the court found appellant ineligible for resentencing.

This appeal followed.

DISCUSSION

Appellant contends the trial court's finding that he intended to inflict great bodily injury on Rendleman is not supported by the record. We conclude the finding is supported by substantial evidence.

I. *Proposition 36*

"The Three Strikes law was enacted in 1994 'to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses.' [Citation.] Under the law, defendants who commit a felony after two or more prior convictions for serious or violent felonies were sentenced to 'an indeterminate term of life imprisonment with a minimum term of' at least 25 years. [Citation.] In 2012, Proposition 36 narrowed the class of third-strike felonies for which an indeterminate sentence could be imposed. Now a defendant convicted of a felony outside of that class can receive at most a sentence enhancement of

twice the term otherwise provided as punishment for that felony. [Citations.] But Proposition 36 makes a defendant ineligible for this limitation on third-strike sentencing if one of various grounds for ineligibility applies." (*People v. Perez* (2018) 4 Cal.5th 1055, 1061–1062 (*Perez*).) One of the grounds is that "[d]uring the commission of the current offense, the defendant . . . intended to cause great bodily injury to another person." (§ 1170.12, subd. (c)(2)(C)(iii); *see also Perez*, at p. 1062.)

"Proposition 36 also authorizes an inmate currently serving an indeterminate term under the original Three Strikes law to petition the trial court for resentencing. [Citation.] Upon receiving such a petition, the trial court 'shall determine whether the petitioner satisfies the criteria' for resentencing eligibility . . . . If the petitioner is found eligible for resentencing, he or she 'shall be resentenced pursuant to [Proposition 36] unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.' As with defendants to be prospectively sentenced for a third-strike offense, an already sentenced inmate whose third strike was a nonserious, nonviolent felony and who otherwise satisfies the criteria for resentencing is nonetheless ineligible for resentencing if his or her current sentence was imposed for an offense during which he or she" intended to cause great bodily injury. (*Perez*, *supra*, 4 Cal.5th at p. 1062; §§ 1170.12, subd. (c)(2)(C)(iii), 1170.126, subd. (e)(2).)

"[O]nce an inmate has made an initial showing of eligibility for resentencing, the burden is on the prosecution to prove beyond a reasonable doubt that one of the grounds for ineligibility applies." (*Perez*, *supra*, 4 Cal.5th at p. 1062.) "[T]he trial court's eligibility determination, to the extent it was 'based on the evidence found in the record of conviction,' is a factual determination reviewed on appeal for substantial evidence. [Citation.] . . . [T]he reviewing court does not reweigh the evidence; appellate review is limited to considering whether the trial court's finding of a reasonable doubt is supportable in light of the evidence." (*Id.* at p. 1066.) *Perez* rejected a contention that "de novo review is more appropriate because trial courts do not have an advantage over appellate courts in determining eligibility based on the record of conviction," reasoning that "even if the trial court is bound by and relies solely on the record of conviction to

determine eligibility, the question [of eligibility] remains a question of fact, and we see no reason to withhold the deference generally afforded to such factual findings." (*Ibid.*)[3]

II. *Analysis*

In arguing the record does not support the trial court's finding beyond a reasonable doubt, appellant suggests Nunez might have been the one who stomped on Rendleman's head, because Nunez admitted he hit Rendleman during a dispute two days earlier. Appellant also argues there was little direct evidence he was the one who stomped on Rendleman's head. He observes it was only Nunez who made that claim, and Nunez had a motive to lie. The shoe print on Rendleman's face looked like it was made by a tennis shoe, but Crawford and Hull testified appellant was wearing dress shoes the night of May 28. Finally, appellant argues his condition after being hit with a bottle by Rendleman was inconsistent with the attack described by Badial and Nunez. He told the police Rendleman hit him so hard he "didn't even know where [he] was" and he was "seeing stars."

We disagree the evidence described by appellant compelled the trial court to find doubt as to appellant's intent to inflict great bodily injury on Rendleman. Badial and Nunez both identified appellant as Rendleman's attacker, and no one testified Nunez attacked Rendleman. Linda Crawford's credibility was greatly undermined by the prior statement she made to the police to the effect that she only saw appellant when he came to the apartment after the fight. Appellant's injury did not preclude the attack described by Badial and Nunez. And the evidence that appellant was wearing dress shoes did not mean he was not the one who stomped on Rendleman, because there is no basis in the record to conclude that dress shoes could not have made the print described by the forensic pathologist. Moreover, Badial's testimony that appellant punched Rendleman in the face six times is sufficient to support a finding of intent to inflict great bodily injury, even if there were reason to doubt that appellant stomped on Rendleman. Accordingly,

[3] Accordingly, the Supreme Court in *Perez* effectively rejected appellant's suggestion that de novo review is appropriate because the trial court below did not preside over appellant's trial.

the trial court's finding of ineligibility for resentencing is supported by substantial evidence.

Appellant also contends the trial court's finding is inconsistent with the jury's verdict. However, this court rejected that argument in *Winn II*. (*Winn II*, *supra*, A144071 at *16-21.) Accordingly, appellant's claim is barred by the law of the case doctrine. (*People v. Stanley* (1995) 10 Cal.4th 764, 786 [" ' "The doctrine of the law of the case is this: That where, upon an appeal, the [reviewing] court, in deciding the appeal, states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal . . . ." ' "].)

DISPOSITION

The trial court's order is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

BURNS, J.

(A153306)